

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK**

JAMES C. SITTS,

Plaintiff,

v.

**9:20-CV-1475
(TJM/ML)**

**SIMONDS, CORY BENE, Officer of Corrections;
BIGGAR, Sergeant, and GOFF, Corporal,**

Defendants.

**Thomas J. McAvoy,
Sr. U.S. District Judge**

DECISION & ORDER

Plaintiff filed this action pursuant to 42 U.S.C. § 1983, alleging that Defendants, Officers at the Delaware County Correctional Facility in Delhi, New York, violated his constitutional rights by using excessive force against him, acting with deliberate indifference to a serious medical need, and retaliating against him for filing grievances. The Court referred the matter to the Hon. Miroslav Lovric, United States Magistrate Judge, for a Report-Recommendation pursuant to 28 U.S.C. § 636(b) and Local Rule 72.3(c).

The Report-Recommendation, dated May 11, 2022, recommends that the Court grant Defendants' motion for summary judgment in part and deny the motion in part. See dkt. # 49. Judge Lovric recommends that the Court deny Defendants' motion with respect to any excessive force and failure to protect claims against Defendants Simonds and Bene and any deliberate indifference to serious medical needs claims against Defendant

Simonds. Judge Lovric also recommends that the Court grant the motion with respect to any claims for First Amendment retaliation. Having examined the evidence, Judge Lovric finds that questions of fact remain as to whether Simonds and Bene used excessive force when they used pepper spray and other methods to handcuff Plaintiff in his cell and whether Simonds unnecessarily delayed medical treatment to Plaintiff after using pepper spray to subdue him.

Defendants filed objections to the Report-Recommendation. See dkt. # 50. When a party objects to a magistrate judge's Report-Recommendation, the Court makes a "*de novo* determination of those portions of the report or specified proposed findings or recommendations to which objection is made." See 28 U.S.C. § 636(b)(1). After such a review, the Court may "accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge. The judge may also receive further evidence or recommit the matter to the magistrate judge with instructions." Id.

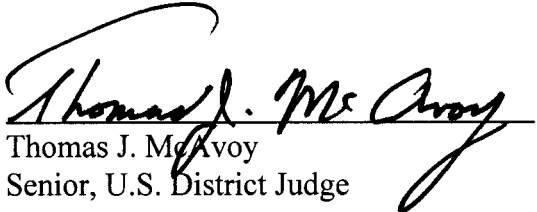
Having reviewed the record *de novo* and having considered the other issues raised in Defendants' objections, this Court has determined to accept and adopt the recommendation of Judge Lovric for the reasons stated in the Report-Recommendation. Defendants' objections ask the Court to accept their version of the events in question. Resolving factual disputes is the province of the jury.

It is therefore **ORDERED** that Plaintiff's objections to the Report-Recommendation of Magistrate Judge Lovirc, dkt. # 50, are hereby OVERRULED. The Report-Recommendation, dkt. # 49, is hereby ACCEPTED and ADOPTED. Defendants' motion for summary judgment, dkt. # 43, is hereby GRANTED IN PART and DENIED IN PART.

The motion is GRANTED with respect to Plaintiff's First Amendment retaliation claim and DENIED with respect to: 1) Plaintiff's excessive force and failure to protect claims against Defendants Simonds and Bene and 2) Plaintiff's deliberate indifference claims against Defendant Simonds.

IT IS SO ORDERED.

Dated: July 11, 2022


Thomas J. McAvoy
Senior, U.S. District Judge